



## CARE Courts Considerations

March 2022

### CARE Court: The Problem

- Everyday Californians, including state leaders, are concerned about the degree of human suffering we witness on our streets.
- To be clear, the state's homelessness crisis is driven by a lack of affordable, accessible housing, not by individuals experiencing mental illness or substance use disorders.
- Homelessness will not be solved through a new court process that lacks additional resources for county behavioral health services and does not guarantee housing options.

CARE Court is designed with the idea that counties need court oversight in order to better prioritize individuals with schizophrenia and schizoaffective disorders within the broader population of clients we serve as a way to address our state's homeless crisis.

In reality, county behavioral health is proactive *and successful* in outreaching and engaging individuals into treatment services, however, housing discrimination and our clients' limited ability to compete in today's market for scarce and expensive housing options increase their vulnerability for becoming and staying homeless, even with housing navigation supports. Every county has clients who are valiantly engaged in treatment services, but who remain unhoused because the housing either does not exist, or they are not able to access it, often due to their behavioral health condition, criminal backgrounds, or poverty.

Three out of ten Californians experiencing homelessness has a significant mental health need, and two out of ten have a substance use disorder. The main predictor of homelessness today is older age, but many populations who have faced systemic discrimination and lack a broader safety net to connect to or remain housed are overrepresented in the homeless population, including Black Californians, LGBTQ youth, domestic violence survivors, and veterans.

### Solutions

- Invest in housing dedicated to individuals with significant behavioral health needs. Support and expand on \$1.5 billion Bridge Housing Solutions.
- Increase funding for county behavioral health safety net to address Californians with serious mental illness and substance use disorder needs experiencing homelessness. In particular, expanded funding for substance use disorder treatment services is overdue.

California needs to do more to create dedicated housing options for county behavioral health clients and invest in expanded funding for services to county behavioral health clients experiencing homelessness as the trauma of homelessness can both worsen existing conditions and trigger new substance use or mental health disorders, such as depression and anxiety. Funding for expanded services is crucial, particularly in light of the ongoing workforce crisis, to expand pay to outreach workers and expand service options. California's optional Medi-Cal benefits should also be reconsidered as fully funded statewide benefits, particularly peer support specialists and Drug Medi-Cal Organized Delivery System benefits, which fund expanded SUD services such as case management and residential treatment.

## CARE Court Equity Concerns

It is well documented that the largely white profession of psychiatry tends to inappropriately misdiagnose Black and Latinx individuals with schizophrenia and other psychotic disorder diagnoses. A 2019 study<sup>1</sup> found that Black individuals are more likely to be diagnosed with a psychotic disorder than white individuals, despite no scientific evidence that Black or Latinx individuals are more likely to have schizophrenia. Researchers found that this misdiagnosis was due to racial bias and clinicians not appropriately screening for and diagnosing depression and mood disorders.

CARE Court focuses on individuals with schizophrenia and schizoaffective disorders, rather than the individual's competency, functioning, and ability to live safely in community. This focus will only increase stigma towards individuals with schizophrenia and schizoaffective disorders and expand court and justice involvement for Black clients of county behavioral health who are likely to be misdiagnosed based on these recent studies.

## Client Outreach & Engagement is Successful

Overcoming an individual's mistrust of the justice and medical systems after a lifetime of systemic discrimination based on race, income, sexual orientation, gender identity, mental health condition or substance use disorder and disability status is the key to successful outreach and engagement. Eligibility that is tied solely to diagnosis will make engagement into services more challenging and add to the stigma and fears associated with schizophrenia, while failing to address the structural bias and housing and service support needs of those who could benefit from intensive pre-conservatorship interventions.

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<sup>1</sup> Michael A. Gara, Shula Minsky, Steven M Silverstein, Theresa Miskimen, Stephen M. Strakowski. A Naturalistic Study of Racial Disparities in Diagnoses at an Outpatient Behavioral Health Clinic. *Psychiatric Services*, 2019; 70 (2): 130 DOI: 10.1176/appi.ps.201800223

# Additional CARE Court Concerns & Considerations

## Sanctions

CARE Court proposes to sanction and even appoint a court agent to direct county behavioral health resources for failing to provide court-ordered services. Although county behavioral health plans are required to offer and provide Medi-Cal specialty mental health and substance use disorder services, the services that are funded and available beyond Medi-Cal may not be available in every county. Even within Medi-Cal, the state has several significant optional benefits, which means that services differ throughout the state – often based on a county’s inability to support a new program without new funding. Finally, CARE Court would require counties to provide services to individuals regardless of payer. Therefore, a court could order the county to provide publicly funded services to individuals with commercial insurance or face penalties.

Under CARE Court, a county without the resources needed to comply with the court ordered plan would be further financially penalized, taking funding away from the county’s core Medi-Cal entitlement responsibilities and subjecting them to further fiscal sanctions from other regulators, such as DHCS.

## New Legal Presumption

CBHDA is concerned that this proposal would bypass the professional judgement of Public Guardians and county behavioral health clinicians by creating a new presumption for LPS Conservatorship for anyone who is found by the court to have failed to comply with the Care Plan developed in this new court process. Trained professionals should have the ability to advise the court on the individual’s progress and whether conservatorship is appropriate or necessary as the experience of involuntary treatment can further traumatize and harm individuals, particularly when it is not necessary or helpful in their recovery and engagement into services.

## Housing Diversion

Any client of county behavioral health should be considered a priority for housing, given the vulnerability of the population overall. As such, this proposal should be carefully constructed so that access to housing does not become contingent upon participation in CARE Court.

## Implementation Timeline

Implementation should be delayed to ensure county behavioral health and courts have the time to build up services and staffing to support CARE Courts, including the additional infrastructure under the Behavioral Health Continuum Infrastructure Program and Community Care Expansion program which launched this year.

## CARE Court Outcomes & Evaluation

CARE Courts should be evaluated to understand outcomes, any unintended consequences, and to center the voice of the individuals who move through this new court process.

## Legislation

CBHDA currently has no position on SB 1338 (Umberg and Eggman) as amended on March 16<sup>th</sup>, but looks forward to engaging with the Legislature and the Administration to ensure that all Californians with significant behavioral health needs receive timely access to treatment services and explore this new framework.